



## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 91

[Docket No.: FAA-2015-8672; Amdt. No. 91-340C]

RIN 2120-AL69

### Extension of the Prohibition Against Certain Flights in Specified Areas of the Sanaa Flight

#### Information Region (FIR) (OYSC)

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This action extends the Special Federal Aviation Regulation (SFAR) prohibiting certain flights in the specified areas of the Sanaa Flight Information Region (FIR) (OYSC) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. The FAA finds this action necessary to address hazards to persons and aircraft engaged in such flight operations due to significant, continuing safety-of-flight risks to U.S. civil aviation operations in that airspace associated with the ongoing conflict between the Saudi Arabian-led Coalition and Iranian-aligned Houthi forces. The FAA extends the expiration date of this SFAR from January 7, 2022, until January 7, 2025.

Additionally, the FAA republishes the approval process and exemption information for this SFAR, consistent with other recently published flight prohibition SFARs.

**DATES:** This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Stephen Moates, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, D.C. 20591; telephone 202-267-8166; email [stephen.moates@faa.gov](mailto:stephen.moates@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

This action extends the prohibition against certain flights in the specified areas of the Sanaa Flight Information Region (FIR) (OYSC) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. Specifically, this amendment continues to prohibit all persons described in paragraph (a) of SFAR No. 115, title 14 *Code of Federal Regulations* (CFR), § 91.1611, from conducting civil flight operations in the specified areas of the Sanaa FIR (OYSC), as described in paragraph (b) of the rule, until January 7, 2025, due to the significant, continuing safety-of-flight risks to U.S. civil aviation operations in that airspace associated with the ongoing conflict between the Saudi Arabian-led Coalition (SLC) and Iranian-aligned Houthi forces.

**II. Legal Authority and Good Cause**

A. Legal Authority

The FAA is responsible for the safety of flight in the U.S. and the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. Sections 106(f) and (g) of title 49, *United States Code* (U.S.C.), subtitle I, establish the FAA Administrator's authority to issue rules on aviation safety. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters,

assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise this authority consistently with the obligations of the U.S. Government under international agreements.

The FAA is promulgating this rulemaking under the authority described in 49 U.S.C. 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of the FAA's authority because it continues to prohibit the persons described in paragraph (a) of SFAR No. 115, § 91.1611, from conducting civil flight operations in the specified areas of the Sanaa FIR (OYSC) due to significant, continuing risks to the safety of U.S. civil flight operations, as described in the preamble to this final rule.

#### B. Good Cause for Immediate Adoption

Section 553(b)(B) of title 5, U.S.C., authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Section 553(d) also authorizes agencies to forgo the delay in the effective date of a final rule for good cause found and published with the rule. In this instance, the FAA finds good cause exists to forgo notice and comment because notice and comment would be impracticable and contrary to the public interest. In addition, it is contrary to the public interest to allow any lapse in the effectivity of the prohibition of U.S. civil flights in the areas to which this SFAR applies, making it appropriate to waive any delay in effective date.

The risk environment for U.S. civil aviation in airspace managed by other countries with respect to the safety of flight is often fluid in circumstances involving weapons capable of targeting, or otherwise negatively affecting, U.S. civil aviation, as well as other hazards to U.S. civil aviation associated with fighting, extremist and militant activity, or heightened tensions.

This fluidity and the need for the FAA to rely upon classified information in assessing these risks make issuing notice and seeking comments impracticable and contrary to the public interest. With respect to the impracticability of notice and comment procedures, the potential for rapid changes in the risks to U.S. civil aviation significantly limits how far in advance of a new or amended flight prohibition the FAA can usefully assess the risk environment. Furthermore, to the extent that these rules and any amendments to them are based upon classified information, the FAA is not legally permitted to share such information with the general public, who cannot meaningfully comment on information to which they are not legally allowed access. As a result, engaging in notice and comment would be impracticable.

Additionally, while there is a public interest in having an opportunity for the public to comment on agency action, it is crucial that the FAA's flight prohibitions, and any amendments thereto, reflect the agency's current understanding of the risk environment for U.S. civil aviation. This allows the FAA to protect the safety of U.S. operators' aircraft and the lives of their passengers and crews without over-restricting U.S. operators' routing options.

As described in the preamble to this rule, extending the flight prohibition for U.S. civil aviation operations in the specified areas of the Sanaa FIR (OYSC) is necessary due to significant, continuing safety-of-flight hazards associated with the ongoing conflict between the SLC and Iranian-aligned Houthi forces. Such circumstances establish that engaging in notice and comment for this rule would be impracticable and contrary to the public interest. Accordingly, the FAA finds good cause exists to forgo notice and comment and any delay in the effective date for this rule.

### **III. Background**

On January 7, 2016, the FAA published SFAR No. 115, § 91.1611, to prohibit U.S. civil aviation operations in the specified areas of the Sanaa FIR (OYSC), due to the hazardous situation faced by U.S. civil aviation from ongoing military operations, political instability,

violence from competing armed groups, and the continuing terrorism threat from extremist elements associated with the fighting and instability in Yemen.<sup>1</sup>

The FAA determined international civil air routes that transited the then-specified areas of the Sanaa FIR (OYSC) and aircraft operating to and from Yemeni airports were at risk from terrorist and militant groups potentially employing anti-aircraft-capable weapons, including man-portable air defense systems (MANPADS), surface-to-air missiles (SAMs), small-arms fire, and indirect fire from mortars and rockets. At the time it promulgated the January 2016 final rule, the FAA found that due to the fighting and instability, there was a risk of possible loss of state control over more advanced anti-aircraft-capable weapons to terrorist and militant groups. Some of the weapons about which the FAA was concerned had the capability to target aircraft at higher altitudes or during approach and departure and had weapon ranges that could extend into the near offshore areas along Yemen's coastline.

In the January 2016 final rule, the FAA also indicated that U.S. civil aviation was at risk from combat operations and other military-related activity associated with the fighting and instability in Yemen and that there was an ongoing threat of terrorism. Al-Qa'ida in the Arabian Peninsula (AQAP) remained active in Yemen and had demonstrated the capability and intent to target U.S. and Western aviation interests. Various Yemeni airports had been attacked during the fighting, including Sanaa International Airport (OYSN) and Aden International Airport (OYAA), resulting in instances of damage to airport facilities and temporary closure of those airports.

On December 14, 2017, the FAA amended SFAR No. 115, § 91.1611, to reduce the boundaries of its prohibition of U.S. civil aviation operations in the specified areas of the Sanaa FIR (OYSC).<sup>2</sup> Between January 2016 and December 2017, the situation in Yemen had slightly

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<sup>1</sup> *Prohibition Against Certain Flights in Specified Areas of the Sanaa (OYSC) Flight Information Region (FIR)* final rule, 81 FR 727 (Jan. 7, 2016).

<sup>2</sup> *Amendment of the Prohibition Against Certain Flights in Specified Areas of the Sanaa (OYSC) Flight Information Region* final rule, 82 FR 58722 (Dec. 14, 2017).

improved, as a coalition of Yemeni government forces, supporting nations, and allied militia elements successfully limited the area of opposition force control and reduced some of the opposition force's weapon capabilities. In December 2017, opposition elements in Yemen did not possess functional medium-/long-range strategic SAM capabilities. As a result, the FAA found there was a sufficiently reduced level of risk to U.S. civil aviation operations on certain international air routes that transit offshore areas of the Sanaa FIR (OYSC) to permit U.S. civil aviation operations on those routes again. However, U.S. civil aviation operations remained prohibited in the rest of the specified areas of the Sanaa FIR (OYSC).

On December 11, 2019, after it again assessed the situation in the specified areas of the Sanaa FIR (OYSC), the FAA determined the situation continued to be hazardous for U.S. civil aviation.<sup>3</sup> Significant risk to U.S. civil aviation operations in the specified areas of the Sanaa FIR (OYSC) continued to exist due to the ongoing conflict between the SLC and Iranian-aligned Houthi forces and an enduring extremist/militant threat to U.S. civil aviation operations in those areas. There had been multiple reported surface-to-air incidents, including successful shoot downs of military tactical and surveillance aircraft by Houthi forces armed with a variety of anti-aircraft-capable weapons. With international assistance, Houthi elements had received or developed, and successfully employed, innovative anti-aircraft-capable weapons, ballistic missiles, and unmanned aircraft systems (UAS) capabilities. Various entities using multiple capabilities had attacked airports within the Sanaa FIR (OYSC). Additionally, extremist or militant elements continued to exploit the conflict for control of territory to launch attacks. As of December 2019, both AQAP and extremists aligned with the Islamic State of Iraq and ash-Sham (ISIS) operated in Yemen. Both of these international extremist or militant organizations have a history of targeting U.S. interests, including civil aviation.

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<sup>3</sup> *Extension of the Prohibition Against Certain Flights in Specified Areas of the Sanaa Flight Information Region (FIR) (OYSC)* final rule, 84 FR 67659 (Dec. 11, 2019).

The FAA continued to assess that opposition elements in Yemen did not possess functional medium-/long-range strategic SAM capabilities and did not control territory from which surface to air weapons could reach air routes off the southern and western coasts of Yemen.

#### **IV. Discussion of the Final Rule**

The FAA continues to assess the situation in the specified areas of the Sanaa FIR (OYSC) as presenting significant, continuing safety-of-flight risks for U.S. civil aviation due to the ongoing conflict between the SLC and Iranian-aligned Houthi forces and the enduring extremist or militant threat to U.S. civil aviation operations in those areas. Houthi forces have continued to develop, acquire, and employ advanced weapons capabilities, including non-traditional air defense capabilities, UAS, and missile capabilities. Collectively, such capabilities pose risks to U.S. civil aviation operations at all altitudes in the specified areas of the Sanaa FIR (OYSC) and airports in Yemen.

Houthi forces operate multiple air defense systems capable of targeting aircraft at various altitudes. Notably, they have employed increasingly capable Iranian-supplied SAMs and electro-optical/infrared seeker (EO/IR) air-to-air (AA) missiles modified for use as SAMs to engage manned and unmanned military aircraft. In 2020, Houthi elements reportedly shot down multiple SLC tactical manned and unmanned aircraft operating in Yemeni airspace, including a Tornado fighter aircraft in February 2020 and an SLC UAS in December 2020. Houthi air defense capabilities pose an inadvertent risk to U.S. civil aviation operations due to the potential for misidentification or miscalculation by irregular forces using advanced air defense capabilities for which they may not have received adequate training and may not have adequate air surveillance information to distinguish accurately between civil aircraft and potential airborne threats. The FAA continues to assess Houthi forces in Yemen do not possess functional medium-/long-range strategic SAM capabilities.

Additionally, Houthi elements have targeted international airports in the region using weaponized UAS, as well as ballistic and cruise missiles. In December 2020, an attack on Aden International Airport (OYAA) occurred shortly after the arrival of a commercial aircraft from Saudi Arabia carrying senior members of the internationally-recognized Government of Yemen.

Although some Houthi offensive weapons systems have range capabilities that would allow them to reach the limited areas of the Sanaa FIR (OYSC) in which the FAA permits U.S. civil aviation to operate, Houthi forces have not demonstrated an intent to conduct weaponized UAS or missile attacks in those areas. Instead, they have focused these types of attacks primarily on targets in Saudi Arabia and targets in contested areas of Yemen. In addition, Houthi weaponized UAS operations would only present a safety of flight hazard to civil aircraft operating off the Yemeni coast if such aircraft were operating below cruising altitudes.

Besides the safety-of-flight risks associated with the conflict between the SLC and Iranian-aligned Houthi forces, extremist or militant groups operating in Yemen likely have access to anti-aircraft-capable weapons, including MANPADS, presenting a risk up to 25,000 feet. AQAP continues to operate in Yemen and historically has attempted to attack Western civil aviation through novel improvised explosive devices, including the 2009 failed underwear bombing attempt on a U.S.-bound flight and the 2010 printer cartridge plot targeting U.S.-bound cargo flights. Additionally, Islamic State of Iraq and ash-Sham (ISIS) cells remain active in Yemen.

As a result of the significant, continuing unacceptable risks to the safety of U.S. civil aviation operations in the specified areas of the Sanaa FIR (OYSC) described in this rule, the FAA extends the expiration date of SFAR No. 115, § 91.1611, from January 7, 2022, until January 7, 2025.

In addition, the FAA has determined U.S. civil aviation operations may continue safely at this time in the remainder of the Sanaa FIR (OYSC). Specifically, U.S. civil aviation operations remain permitted in that airspace west of a line drawn direct from KAPET (163322N 0530614E)



to NODMA (152603N 0533359E), southwest of a line drawn direct from NODMA to ORBAT (140638N 0503924E) then from ORBAT to PAKER (115500N 0463500E), north of a line drawn direct from PAKER to PARIM (123142N 0432712E), and east of a line drawn direct from PARIM to RIBOK (154700N 0415230E). Operations on jet routes UT702 and M999 also remain permitted.

Further amendments to SFAR No. 115, § 91.1611, might be appropriate if the risk to U.S. civil aviation safety and security changes. In this regard, the FAA will continue to monitor the situation and evaluate the extent to which persons described in paragraph (a) of this rule might be able to operate safely in the specified areas of the Sanaa FIR (OYSC).

The FAA also republishes the details concerning the approval and exemption processes in sections V and VI of this preamble, consistent with other recently published flight prohibition SFARs, to enable interested persons to refer to this final rule for comprehensive information about requesting relief from the FAA from the provisions of SFAR No. 115, § 91.1611.

## **V. Approval Process Based on a Request from a Department, Agency, or Instrumentality of the United States Government**

### **A. Approval Process Based on an Authorization Request from a Department, Agency, or Instrumentality of the United States Government**

In some instances, U.S. Government departments, agencies, or instrumentalities may need to engage U.S. civil aviation to support their activities in the specified areas of the Sanaa FIR (OYSC). If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person described in paragraph (a) of SFAR No. 115, § 91.1611, including a U.S. air carrier or commercial operator, to transport civilian or military passengers or cargo or conduct other operations in the specified areas of the Sanaa FIR (OYSC), that department, agency, or instrumentality may request the FAA to approve persons described in paragraph (a) of SFAR No. 115, § 91.1611, to conduct such operations.

The requesting U.S. Government department, agency, or instrumentality must submit the request for approval to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality.<sup>4</sup> The FAA will not accept or consider requests for approval from anyone other than the requesting U.S. Government department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval must be sufficiently positioned within the requesting department, agency, or instrumentality to demonstrate that the organization's senior leadership supports the request for approval and is committed to taking all necessary steps to minimize aviation safety and security risks to the proposed flights. The senior official must also be in a position to: (1) attest to the accuracy of all representations made to the FAA in the request for approval, and (2) ensure that any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requesting U.S. Government departments, agencies, or instrumentalities must submit requests for approval to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality wishes the proposed operation(s) to commence.

The requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, D.C. 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the FAA grants the request for approval. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267-8166, to obtain the appropriate email address. A

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<sup>4</sup> This approval procedure applies to U.S. Government departments, agencies, or instrumentalities; it does not apply to the public. The FAA describes this procedure in the interest of providing transparency with respect to the FAA's process for interacting with U.S. Government departments, agencies, or instrumentalities that seek to engage U.S. civil aviation to operate in the area in which this SFAR would prohibit their operations in the absence of specific FAA approval.

single letter may request approval from the FAA for multiple persons described in SFAR No. 115, § 91.1611, or multiple flight operations. To the extent known, the letter must identify the person(s) the requester expects the SFAR to cover on whose behalf the U.S.

Government department, agency, or instrumentality seeks FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service the person(s) covered by the SFAR will provide;
- To the extent known, the specific locations in the specified areas of the Sanaa FIR (OYSC) where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the specified areas of the Sanaa FIR (OYSC) and the airports, airfields, or landing zones at which the aircraft will take off and land; and
- The method by which the requesting department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (i.e., the pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S.

Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or its prime contractor has a subcontract(s)) for specific flight operations in the specified areas of the Sanaa FIR (OYSC). The requestor may identify additional operators to the FAA at any time after the FAA issues its approval. Neither the operators listed in the original request, nor any operators the requestor subsequently seeks to add to the approval, may commence operations under the approval until the FAA issues them an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, for operations in the specified areas of the Sanaa FIR (OYSC). The approval conditions discussed below apply to all operators. Requestors should send updated lists to the email address they obtain from the Air Transportation Division by calling (202) 267-8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Stephen Moates for instructions on submitting it to the FAA. His contact information appears in the FOR FURTHER INFORMATION CONTACT section of this final rule.

FAA approval of an operation under SFAR No. 115, § 91.1611, does not relieve persons subject to this SFAR of the responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificates, OpSpecs, and LOAs, as applicable. Operators must also comply with all rules and regulations of other U.S. Government departments, agencies, or instrumentalities that may apply to the proposed operation(s), including, but not limited to, regulations issued by the Transportation Security Administration.

#### B. Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety organization will send an approval letter to the requesting U.S. Government department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the specified areas of the Sanaa FIR (OYSC); and

(b) The operator's written agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the specified areas of the Sanaa FIR (OYSC).

(3) Other conditions the FAA may specify, including those the FAA might impose in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy the FAA issues under chapter 443 of title 49, U.S.C.

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or LOA, as applicable, to the operator(s) identified in the original request and any operators the requestor subsequently adds to the approval, authorizing them to conduct the approved operation(s). In addition, as stated in paragraph (3) of this section V.B., the FAA notes that it may include additional conditions beyond those contained in the approval letter in any OpSpec or LOA associated with a particular operator operating under this approval, as necessary in the interests of aviation safety. U.S. Government departments, agencies, and instrumentalities requesting FAA approval on behalf of entities with which they have a contract or subcontract, grant, or cooperative agreement should request a copy of the relevant OpSpec or LOA directly from the entity with which they have any of the foregoing types of arrangements, if desired.

## **VI. Information Regarding Petitions for Exemption**

Any operations not conducted under an approval the FAA issues through the approval process set forth previously may only occur in accordance with an exemption from SFAR No. 115, § 91.1611. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those described in the approval process in the previous section. To determine whether a petition for exemption from the prohibition this SFAR establishes fulfills the standard of 14 CFR 11.81, the FAA consistently finds necessary the following information:

- The proposed operation(s), including the nature of the operation;
- The service the person(s) covered by the SFAR will provide;

- The specific locations in the specified areas of the Sanaa FIR (OYSC) where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the specified areas of the Sanaa FIR (OYSC), and the airports, airfields, or landing zones at which the aircraft will take off and land;
- The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (i.e., the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures the operator will use to minimize the risks identified in this preamble to the proposed operations, to support the relief sought and that granting such relief would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

The FAA includes, as a condition of each such exemption it issues, a release and agreement to indemnify, as described previously.

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that may be affected by SFAR No. 115, § 91.1611. While the FAA will not permit these operations through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and in accordance with the order of preference set forth in paragraph (c) of SFAR No. 115, § 91.1611.

If a petition for exemption includes security-sensitive or proprietary information, requestors may contact Aviation Safety Inspector Stephen Moates for instructions on submitting it to the FAA. His contact information is listed in the FOR FURTHER INFORMATION CONTACT section of this final rule.

## **VII. Regulatory Notices and Analyses**

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as codified in 5 U.S.C. 603 et seq., requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96-39), as codified in 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that Executive order. As 5 U.S.C. 553 does not require notice and comment for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, by exceeding the threshold identified previously.

## A. Regulatory Evaluation

This action extends without change the prohibition against certain U.S. civil flight operations in the specified areas of the Sanaa FIR (OYSC) for an additional three years, due to the significant, continuing hazards to U.S. civil aviation operations in that airspace, as described in the preamble of this final rule. The rule continues to allow U.S. civil aviation to use the M999 and UT702 air routes, so flight times and operating expenses, such as fuel, for U.S. operators that transit the Middle East on those routes are not affected by this final rule.

The FAA acknowledges the continued prohibition of U.S. civil aviation operations in the specified areas of the Sanaa FIR (OYSC) might result in additional costs to some U.S. operators, such as increased fuel costs and other operational-related costs. However, the FAA expects the benefits of this action exceed the costs because it will result in the avoidance of risks of fatalities, injuries, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the specified areas of the Sanaa FIR (OYSC). The FAA will continue to monitor and evaluate the safety and security risks to U.S. civil operators and airmen as a result of conditions in the specified areas of the Sanaa FIR (OYSC) and the surrounding region.

## B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553, after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.



### C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from risks to their operations in the specified areas of the Sanaa FIR (OYSC), a location outside the U.S. Therefore, the rule complies with the Trade Agreements Act of 1979.

### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens it imposes on the public. The

FAA has determined no new requirement for information collection is associated with this final rule.

#### F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA's policy is to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined no ICAO Standards and Recommended Practices correspond to this regulation. The FAA finds this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure the FAA exercises its duties consistent with the obligations of the United States under international agreements.

While the FAA's flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner's code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition for U.S. civil aviation. In addition, foreign air carriers and other foreign operators may choose to avoid, or be advised or directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition for U.S. civil aviation.

#### G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined this action is exempt pursuant to Section 2-5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8-6(c), the FAA has prepared a memorandum for the record stating the reason(s) for this determination and has placed it in the docket for this rulemaking.

## **VIII. Executive Order Determinations**

### A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132. The agency has determined this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications.

### B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211. The agency has determined it is not a “significant energy action” under the executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

### C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609 promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

## **IX. Additional Information**

### **A. Electronic Access**

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the docket for this rulemaking.

Those documents may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at <https://www.federalregister.gov> and the Government Publishing Office's website at <https://www.govinfo.gov>. A copy may also be found at the FAA's Regulations and Policies website at [https://www.faa.gov/regulations\\_policies](https://www.faa.gov/regulations_policies).

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

### **B. Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121) (set forth as a note to 5 U.S.C. 601) requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the persons listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit [https://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](https://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

## **List of Subjects in 14 CFR Part 91**

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Yemen.

## **The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

### **PART 91—GENERAL OPERATING AND FLIGHT RULES**

1. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

2. Amend § 91.1611 by revising paragraph (e) to read as follows:

#### **§ 91.1611 Special Federal Aviation Regulation No. 115—Prohibition Against Certain Flights in Specified Areas of the Sanaa Flight Information Region (FIR) (OYSC).**

\* \* \* \* \*

(e) *Expiration.* This SFAR will remain in effect until January 7, 2025. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued in Washington, D.C., under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on or about December 1, 2021.

Steve Dickson,

Administrator.

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